

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

OP.No. 1117 of 2003(G)

PETITIONER:

**T.I.DAVIS, JEYAR AGENCIES,
POOTHOLE, THRISSUR DISTRICT.**

**BY ADV. SRI.K.B.MUHAMED KUTTY,
ADV. SRI.K.M.FIROZ.**

RESPONDENTS:

- 1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.**
- 2. THE INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, THRISSUR.**
- 3. THE DEPUTY THASILDAR (RR),
TALUK OFFICE, THRISSUR.**

BY

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

ORDER ON C.M.P. NO. 2017/2003 IN O.P. NO. 1117/2003

DISMISSED

13/12/2007.

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE COMMON REVISION ORDER PASSED BY THE R.1. DTD. 30/11/2002.

EXT.P.2: COPY OF THE PENALTY ORDER FOR THE YEAR 97-98 DTD. 12/10/01 OF THE R.1.

EXT.P.3: COPY OF THE PENALTY ORDER FOR THE YEAR 99-2000, DTD. 12/10/01 OF THE R.2.

EXT.P.4: COPY OF THE PENALTY ORDER FOR THE YEAR 2000-2001, DTD 12/10/01 OF THE R.2.

EXT.P.5: COPY OF THE ORDER DTD. 25/1/2002 ISSUED BY THE R.1. NO. STRP 176,177 & 178/2001.

EXT.P.6: COPY OF THE REVISION PETITION BEFORE THE R.1. DTD. 27/02/2002.

EXT.P.7: COPY OF THE RECEIPT DTD. 20/03/2002, 22/03/2002.

EXT.P.8: COPY OF THE DEMAND NOTICE DTD. 18/03/2002 NO. R8-311/2002 ISSUED BY THE R.3.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.1117 of 2003-G

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Dated this the 13th day of December, 2007.

JUDGMENT

1.The petitioner challenges the final order issued by the second revisional authority on penalty proceedings under Section 45A of the Kerala General Sales Tax Act, 1963, hereinafter referred to as the "Act". Spread over for the period 1997-98, 1999-2000 and 2000-2001, proceedings were initiated against the petitioner on the ground that certain first sales were shown as second sales. The case put up on behalf of the petitioner before the second revisional authority, as indisputably discernible from Ext.P1, is that while the petitioner runs a proprietary concern as Jayar Agencies, shop inspection unearthed letterheads of one Viswas

Chemicals, which letterhead carried certain registration numbers under the sales tax laws. It ultimately turned out that there was no dealer by name Viswas Chemicals with the registration numbers that were shown in that letterhead. The plea of the petitioner even before the second revisional authority was that he was acting as an agent of Viswas Chemicals and the business was canvassed by Viswas Chemicals representing to the petitioner that he would be only a second seller in the State. The second revisional authority and the authorities below it were not inclined to accept that version, particularly because the dealer "Viswas Chemicals" could never be traced even on the basis of the materials that the petitioner gave. The petitioner admitted that he himself was the agent of Viswas Chemicals. Even if he had shown that somebody else was also involved in duping him as contended by him, the fact remains that the petitioner had drawn the drafts for the purchase price in favour of the dealer in Pondicherry, which is not Viswas

Chemicals. Therefore, the transactions got the inescapable colour of inter-state sales. For the aforesaid reasons, I do not find any jurisdictional error or legal infirmity in the impugned orders.

2. Be that as it may, on the question of mens-rea and the question of the quantum of penalty to be imposed, the learned senior counsel appearing for the petitioner argued that the petitioner having disclosed the transactions, on the basis of which assessment proceedings have been finalised, there is no reason to impose double the tax evaded as penalty as done as per the penalty order. The first revisional authority had shown some indulgence and reduced the penalty. The second revisional authority sustained the order of the first revisional authority.

3. Having regard to the totality of the facts and circumstances, including the fact that the petitioner had disclosed the transactions in the

assessment proceedings, though the proceedings were finalised after initiation of the penalty proceedings, I am inclined to take the view that the penalty equivalent to the amount of tax evaded would be sufficient to meet the ends of justice. Accordingly, the impugned orders would stand modified to the effect that the penalty for the three years in question would be equivalent to the tax evaded as found in the order of the Intelligence Officer.

4.The writ petition is allowed to the extent stated above. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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OP1117/2003

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THOTTATHIL B. RADHAKRISHNAN, J .

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O.P.No.1117 of 2003-G

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JUDGMENT

Dated: 13th December, 2007.